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~~02301. 9703-LL-00085~~

1 IN THE CRIMINAL COURT OF MADISON COUNTY, TENNESSEE

2 AT JACKSON

3
4 **STATE OF TENNESSEE**

5
6 vs.

No. 96-589

7
8 **JON DOUGLAS HALL**

9
10 **TRANSCRIPT OF EVIDENCE**

11 **FEBRUARY 4, 1997**

12 **VOLUME III**
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21 **AMY MAYS**

22 **OFFICIAL COURT REPORTER**

23 **MADISON COUNTY COURTHOUSE**

24 **JACKSON, TENNESSEE 38301**

25 **(901) 423-6039**

FILED

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JOE GATNEY, CIRCUIT COURT CLERK
A.M. DEPUTY CLERK

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1 (The jury returned into open court,
2 and the following proceedings were
3 had to-wit:)

4 THE COURT: Ladies and gentlemen, the
5 Defendant doesn't have to prove anything, as I've
6 already stated to you, but in this instance they choose
7 to put proof on. But they don't have to prove
8 anything. It's up to the State to prove the case
9 beyond a reasonable doubt, but they may put on proof,
10 which they elected to do.

11 Proceed.

12 **CHERYL ARBOGAST** was called and being first
13 duly sworn, was examined and testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MR. MAYO:**

16 Q Would you state your name for the Court,
17 please, ma'am?

18 A Cheryl Arbogast.

19 Q Ms. Arbogast, how are you related to Jon
20 Hall?

21 A My brother's sister.

22 Q How old are you, Ms. Arbogast? If you don't
23 mind me asking.

24 A No, I'm 37.

25 Q Ms. Arbogast, where do you live?

1 A Cincinnati.

2 Q And what do you do for a living?

3 A I'm a registered nurse.

4 Q Ms. Arbogast, you know why you're here. You
5 know what's occurred; is that occurred? What occurred
6 on July 29th, 1994?

7 A I believe I do.

8 Q Ms. Arbogast, I want to ask you a few
9 questions about Mr. Hall and about your knowledge of
10 his life at that particular time.

11 MR. WOODALL: Your Honor, may we approach the
12 bench?

13 THE COURT: Yes, sir.

14 **(There was a conference at the**
15 **bench, out of the hearing of**
16 **the jury, as follows:)**

17 MR. WOODALL: Your Honor, what I anticipate
18 she's getting ready to testify might be proper if we
19 get to the mitigation stage, but unless she was in town
20 and was with him prior to this occurring, or with him
21 while it occurred, this is not admissible in evidence
22 at this time.

23 Now, in order to prevent error, I would
24 suggest that Your Honor excuse the jury and hear her
25 testimony before it's allowed to go to the jury, but I

1 just don't -- She may say he was upset and all this
2 kind of stuff and --

3 THE COURT: Are you introducing her as a
4 character witness?

5 MR. MAYO: No, sir.

6 THE COURT: Well what kind of witness?

7 MR. MAYO: Your Honor, I didn't get to my
8 questions.

9 THE COURT: Well I'm asking now.

10 MR. MAYO: It's her brother here, and she
11 knew his state of mind and --

12 THE COURT: How could she know state of mind
13 if she wasn't here?

14 MR. MAYO: Your Honor, she had talked to a
15 lot of folks, had talked to him, talked to his deceased
16 brother, and she is a nurse herself, so she would have
17 some --

18 THE COURT: I'm going to let the jury go.

19 **(End of conference at the bench.)**

20 **(The jury was excused from open**
21 **court, and the following proceedings**
22 **were had to-wit:)**

23 THE COURT: I'm going to let you put this in
24 the record, but now, I want you to confine yourself to
25 something that's not hearsay. I don't want you to be

1 asking, did she say and did he say. Those are clearly
2 hearsay questions. So I want you to confine yourself
3 now without hearsay.

4 MR. MAYO: Yes, sir.

5 THE COURT: And, young lady, I don't want you
6 repeating conversations that somebody else had with
7 you, other than perhaps the Defendant. We'll cross
8 that bridge. But anybody else's conversation is not
9 admissible.

10 MR. WOODALL: Your Honor, I would suggest to
11 the Court that even any conversation that she may have
12 had with the Defendant would not be admissible since
13 his credibility is not in issue.

14 THE COURT: I'm going to listen to it,
15 General. I'm telling her at the outset I don't want
16 the hearsay.

17 Go ahead.

18 Q Ms. Arbogast, I'm going to ask you a question
19 directly about July 29th of 1994, the night that this
20 occurred. On that particular night were you attempting
21 to do anything for Jon Hall?

22 A Absolutely. I was --

23 THE COURT: Where were you at that night?

24 THE WITNESS: At my house.

25 THE COURT: Where is your house?

1 THE WITNESS: Cincinnati.

2 THE COURT: You were in Cincinnati and you
3 were not in Tennessee; is that right?

4 THE WITNESS: That's correct.

5 THE COURT: All right, go ahead.

6 A Can you please restate the question?

7 Q On July 29th of 1994, were you trying to do
8 anything or get anything done for Jon Hall?

9 A I was trying to find a way to get him some
10 psychiatric counseling on a very urgent basis. He was
11 crying and distraught.

12 THE COURT: Well did you talk to him on the
13 phone that night?

14 THE WITNESS: It was that night that I was on
15 the phone talking with my brother.

16 THE COURT: With Mr. Hall.

17 THE WITNESS: With Jeff.

18 MR. MAYO: Jeff, the deceased brother, Your
19 Honor.

20 THE COURT: Oh, the deceased brother.

21 MR. MAYO: Yes, sir.

22 THE COURT: Well that's not admissible.

23 MR. MAYO: Yes, sir. I'm strictly asking her
24 what she was doing herself, and I'm only trying to
25 introduce it as far as state of mind. That's the only

1 purpose for it.

2 THE COURT: State of her mind, but we're not
3 interested in her state of mind. It's his state of
4 mind.

5 MR. MAYO: Yes, sir, as to -- That's why
6 we're trying to introduce it, Your Honor.

7 THE COURT: Go right ahead.

8 Q Continue, please, Ms. Arbogast.

9 A Jon had been very distraught, upset over
10 Jeff's impending death, about his relationship with
11 Billie and wanting to work out problems in their
12 marriage. He was flighting from one idea to another.
13 He was upset because Mom was so far away and he had no
14 family support, and he was concerned what would happen
15 with his family. If he did end up getting a divorce,
16 he was going to be devastated over missing his
17 children, and he was going from one topic to another
18 and crying, sobbing over each of those things, from one
19 topic back to the next back to another and just --

20 THE COURT: Are you talking about your dead
21 brother or are you talking about Mr. Hall here?

22 THE WITNESS: Jon.

23 THE COURT: Jon, here.

24 All right, go ahead.

25 Q Ms. Arbogast, based upon his condition at

1 that time, were you attempting in that conversation
2 with your deceased brother to work out some kind of
3 plan to get him committed?

4 A Yes. I had discussed with Jeff that he had
5 symptoms of acute depression, and that it was so
6 severe, from his description, he needed to have
7 counseling on an urgent basis, if not hospitalization
8 and professional treatment. He says, "I can't make him
9 go." I said, "I --"

10 THE COURT: Well now obviously -- I've told
11 you before, you're not to -- Let me ask you this. When
12 you say, "I can't make him not to go," you told me a
13 moment ago you were talking to Jon Hall. Is that what
14 Jon Hall, "I cannot make him go"?

15 THE WITNESS: No, sir.

16 MR. WOODALL: The deceased brother said that,
17 Your Honor.

18 THE COURT: Well that's not admissible.
19 Go ahead.

20 MR. MAYO: Yes, sir. Your Honor, this is an
21 offer of proof, if Your Honor will. The deceased
22 brother obviously is not here. He died in July of
23 1995, prior to Mr. Ford and I being on the case, and
24 his statement was not taken, no deposition. So we have
25 no proof as to what the brother would have said.

1 THE COURT: Tell her not to say what the
2 brother said. That's what I'm trying to get you to.
3 At least that's not admissible.

4 Q Ms. Arbogast, as you discussed this matter
5 with your brother, Jeff Hall, the deceased brother,
6 based upon that conversation you had, did you do
7 anything else?

8 A I made a series of phone calls trying to find
9 Jon. I had called his home the night of July 29th
10 repeatedly. He doesn't have an answering machine. I
11 was not able to leave any messages. I had no way to
12 get in touch with him. I tried to call the Lambert
13 home, and I did call them the next morning. At first I
14 got a busy signal and then the answering machine kicked
15 on shortly thereafter, and I didn't know what to say.
16 I knew that he was so depressed and that they had been
17 having a lot of problems in their marriage. I didn't
18 know what kind of message to leave, and so I just hung
19 up on their answering machine. I tried to figure out
20 an 800 number for crisis intervention that could be
21 called in Tennessee, and I was hoping to find a way to
22 get Jeff to coerce him to go to a hospital to have
23 perhaps a 72-hour hold placed on him so that he could
24 be evaluated by medical professionals.

25 Q Jeff is the who you were talking to during

1 this entire time. Jeff is the one also who had had a
2 lot of contact during that time period with Mr. Hall,
3 Mr. Jon Hall.

4 THE COURT: Don't lead her. Don't lead her.

5 A He was --

6 THE COURT: Just ask her. Don't lead her.

7 MR. MAYO: I'm trying to avoid hearsay. I
8 can ask her that question.

9 THE COURT: Well you said this. "You had a
10 lot of conversations with him." If that isn't leading,
11 I don't know what leading is.

12 MR. MAYO: Well, Your Honor, I would ask you
13 to allow me to make an offer of proof then at this
14 moment as to what Jeff Hall would have said since he is
15 no longer with us and no statement was taken from him.
16 I'd like to make an offer of proof as to that, Your
17 Honor.

18 THE COURT: Are you saying Jeff Hall's
19 statement is admissible?

20 MR. MAYO: Through her?

21 THE COURT: Yes.

22 MR. MAYO: No, sir.

23 THE COURT: Well how can you -- How otherwise
24 can you get it in?

25 MR. MAYO: I'm not stating that we can get it

1 in, Your Honor.

2 THE COURT: Well then why ask her about it
3 then if you can't get it in and you admit it's not
4 admissible?

5 MR. MAYO: Because I'd like to make an offer
6 of proof on it, Your Honor. The jury is not here.

7 THE COURT: Well if you admit it's not
8 admissible, why make --

9 MR. MAYO: Your Honor, it would be admissible
10 --

11 THE COURT: Wait a minute. Wait a minute.
12 Why waste our time with something that's not
13 admissible?

14 MR. MAYO: Because it would be admissible if
15 there was a deposition that had been taken at the time.

16 THE COURT: But it wasn't taken.

17 MR. MAYO: That's correct, Your Honor.

18 THE COURT: So you concede it's not
19 admissible.

20 MR. MAYO: It's not admissible now. That's
21 correct.

22 THE COURT: Well is there any way to make it
23 admissible legally?

24 MR. MAYO: Your Honor, this is an offer of
25 proof.

1 THE COURT: I asked you a question. I know
2 it's an offer of proof, but it's a waste of time when
3 it's something that is not concerned in the case.

4 MR. MAYO: Your Honor, this is a death
5 penalty case. We have a right to make an offer of
6 proof as to something that is extremely material. Mr.
7 Jeff Hall is the first person who saw Jon Hall after
8 this occurred. He went straight down to Texas and saw
9 Mr. Hall. He was the only person that talked to Mr.
10 Hall the day that this occurred, three or four days
11 previous to this occurring. His testimony would have
12 been extremely relevant at this hearing. He is not
13 with us, and someone did not take his statement. We
14 think it's very important to make an offer of proof as
15 to what Jeff Hall would have said at this trial on
16 behalf of Mr. Jon Hall.

17 THE COURT: Go ahead. You concede it's not
18 admissible, so I don't know why you want to make an
19 offer of proof of something that's not admissible, but
20 I'm going to let you do it. Go ahead.

21 MR. MAYO: Thank you, Your Honor.

22 Q Ms. Arbogast, if I can get back to where we
23 were, if I can remember.

24 A I had asked Jeff to please just take him to
25 the hospital, and he said, "I don't think I can. I

1 can't make him go." And I said that people who are in
2 this situation can't realize for their own self that
3 they need that kind of help. He was so distraught. He
4 didn't have any hope. He didn't know where to turn.

5 Q Are these things that Jeff Hall told you?

6 A He had no support.

7 MR. WOODALL: Yes or no? These are things
8 that Jeff told you?

9 Q On the record just please say yes or no.

10 MR. MAYO: Your Honor, Mr. Woodall needs to
11 make an objection if he wants to talk to the witness at
12 this point.

13 THE COURT: Well, Mr. Woodall is trying to
14 help. The jury is not here. Go ahead. Go ahead, Mr.
15 Mayo. Put in what you want to. I'm going to allow it
16 all in.

17 MR. MAYO: Yes, sir.

18 Q Ms. Arbogast, would you continue?

19 THE COURT: Let me ask you this, ma'am.
20 Prior to this event, had you ever at any time tried to
21 have the Defendant committed or anything of that sort?

22 THE WITNESS: It was not until after I --

23 THE COURT: I'm not asking --

24 THE WITNESS: -- knew about this.

25 THE COURT: Listen to my question. Prior to

1 this event, had you ever attempted to have him
2 committed?

3 THE WITNESS: No, sir.

4 THE COURT: All right, go ahead.

5 Q I don't remember where you were. If you
6 would just continue.

7 A I'm not sure I do, sir.

8 THE COURT: She was telling you about what
9 his brother said at some time a year or two after --
10 not a year or two after, but this man who's dead whose
11 statement cannot be admitted, on my ruling, she's
12 telling you what he said to her. So that's where she
13 was.

14 MR. MAYO: Thank you, sir.

15 THE COURT: You're welcome.

16 A I suggested trickery. I suggested Jeff fake
17 a stomach illness or some reason that he needed to be
18 taken to the emergency room so that Jon could drive him
19 there and then have the doctor put him on a 72-hour
20 hold for emergency psychiatric counseling.

21 Q Did you also understand after this occurred
22 that Jon went to see Jeff --

23 THE COURT: Now, Mr. -- ask her what does she
24 know about what he did, not, "Do you understand ...".
25 This is clearly leading and suggestive. Rephrase your

1 question.

2 Q Do you know where Jon went on July 29th?

3 A Back to Jeff's house.

4 Q Where was that, Ms. Arbogast?

5 A Out in Texas. He had been visiting with Jeff
6 for about I think eight days, and it occurred maybe a
7 week, two weeks maybe, before Billie's death on the
8 29th, and when he was visiting with Jeff, it was quite
9 apparent he was suicidal and that he just did not know
10 how to make everything that was wrong in his life
11 right, and the stress of Jeff's health failing at that
12 point was only that much more difficult for us to all
13 bear, and before Jon started a new job, he wanted to
14 have one last opportunity to take that time that he had
15 free to see Jeff, because every time we saw him we
16 thought it would be our last.

17 Q Ms. Arbogast, you just stated that Jon went
18 to see Jeff. Was Jeff alive at that time in Texas on
19 July 29th, July 30th of 1994?

20 A Yes. He was supposed to have gone --

21 THE COURT: Just answer yes or no, please,
22 ma'am. Answer his question and then stop.

23 THE WITNESS: I'm sorry.

24 THE COURT: Go ahead.

25 Q Ms. Arbogast, when did he die, Jeff Hall?

1 A July 4th, 1995.

2 MR. MAYO: That's all, Your Honor.

3 THE COURT: Mr. Mayo, the Court is going to
4 exclude any conversations with Jeff and anything she
5 doesn't know.

6 MR. MAYO: Yes, sir, absolutely, Your Honor.

7 THE COURT: It's going to be excluded.

8 MR. MAYO: I just offered it as an offer of
9 proof, and that's all.

10 THE COURT: It's in.

11 General, do you want to ask her anything?

12 The Court is excluding the matter.

13 MR. EARLS: Just a couple of questions, Your
14 Honor.

15 **CROSS-EXAMINATION**

16 **BY MR. EARLS:**

17 Q Did you ever talk to Jon Hall yourself?

18 A You mean in the days prior to Billie's death?

19 Q Yes.

20 A No, sir.

21 Q Did you ever observe his person?

22 A No.

23 Q Everything that you're testifying to is based
24 upon what someone else told you; is that right?

25 A That's right.

1 MR. EARLS: That's it, Your Honor.

2 THE COURT: Let me ask you one more question.
3 How long was it prior, before this event, that you had
4 talked to your brother, Jon?

5 THE WITNESS: It had been several months.

6 THE COURT: Several months. All right. Then
7 what you're speaking about is something that you
8 discussed with your brother who is now deceased, and
9 this discussion was several months since you had seen
10 him; is that right?

11 THE WITNESS: Up until then. We lived in
12 different states, so we saw each other very little. We
13 would speak on the phone every few months.

14 THE COURT: And it had been several months
15 since you had spoke to him, spoke to Jon Hall before
16 you talked to this brother who is now deceased.

17 THE WITNESS: That's correct.

18 MR. WOODALL: Your Honor, I understand the
19 offer of proof. That having been made and excepted by
20 the Court, it's now the State's position that none of
21 this is admissible into evidence on their proof in
22 chief, none of it.

23 MR. MAYO: No argument, Your Honor, just an
24 offer of proof.

25 THE DEFENDANT: Just argument ineffective

1 assistance of counsel.

2 THE COURT: Are you ready to excuse her?

3 MR. WOODALL: Your Honor, Jon Hall keeps
4 running his mouth over there about his lawyers and
5 about these girls. I don't think Your Honor is hearing
6 him.

7 THE COURT: Mr. Hall, if you don't keep your
8 mouth shut, I'm either going to put a gag on you --
9 I'll give you a choice. I'm going to put you back in
10 here where you can't hear. Now you've got a choice.
11 You understand? I don't want you to open your mouth or
12 say anything to anybody except the lawyers. You
13 understand that?

14 THE DEFENDANT: I just want to make it on the
15 record that my counsel -- that they could have
16 preserved it before he died, and that's why I've been
17 claiming ineffective assistance of counsel.

18 **(WITNESS EXCUSED.)**

19 MR. MAYO: Your Honor, that's the only
20 witness we have that is available at this present time.
21 We'd ask for a brief recess.

22 THE COURT: Well now if you've got any other
23 witnesses, and you, too, Mr. Woodall, with the
24 exception of that doctor, I expect you to have them
25 here ready.

1 MR. MAYO: That's all we have is the doctor,
2 an expert, that's on her way from Memphis.

3 THE COURT: Well the rules say if you don't
4 have them here when you're supposed to you can proceed
5 on.

6 MR. MAYO: Your Honor, we're not asking for a
7 continuance --

8 MR. WOODALL: Your Honor, in all fairness to
9 them, we've sped this thing right along, and I can
10 appreciate their problem not having this doctor here
11 right on time.

12 THE COURT: When do you expect to have him?

13 MR. MAYO: 2:30 to 3:00, Your Honor.

14 THE COURT: Well, in the future, Mr. Woodall,
15 starting in the morning, and all you people, I want
16 your witnesses here and waiting, starting in the
17 morning. I didn't make that clear before, but this
18 jury is being inconvenienced with regard to having to
19 wait around here, but I'm saying in the morning now,
20 I'm expecting you people to have your witnesses,
21 whatever you want, here present at 8:30 in the morning.

22 MR. MAYO: Yes, sir.

23 THE COURT: All right, we're in recess 'til
24 your doctor comes.

25 **(There was a short recess; and with**

1 the jury in open court, the
2 following proceedings were had
3 to-wit:)

4 DR. LYNN DONNA ZAGER was called and being
5 first duly sworn, was examined and testified as
6 follows:

7 **DIRECT EXAMINATION**

8 **BY MR. MAYO:**

9 Q Would you state your name for the Court,
10 please?

11 A My name is Lynn Donna Zager.

12 Q And, Dr. Zager, what is your occupation?

13 A I'm a clinical psychologist.

14 Q How did you become a clinical psychologist?

15 A I received my Bachelor's Degree from the
16 University of Tennessee in 1976. I received a Masters
17 of Science and a Doctorate from Florida State
18 University in 1978 and 1981. In addition to that I
19 completed an internship under the supervision of other
20 psychologists.

21 Q Have you done any lectures or written any
22 treatises or anything of that nature?

23 A Yes, I have.

24 Q Would you please tell us what they are?

25 A The majority of my research and publications

1 have to do with individuals who have issues with the
2 criminal justice system. I've written a number of
3 articles, especially about a personality inventory, the
4 MMPI.

5 MR. MAYO: Your Honor, I would move to
6 qualify her as an expert at this point.

7 THE COURT: Any objection, General?

8 MR. EARLS: Your Honor, could I ask just one
9 question?

10 THE COURT: If you wish.

11 MR. EARLS: Do you have any training in the
12 field of medicine?

13 THE WITNESS: No, I do not.

14 MR. MAYO: Your Honor, I move her as an
15 expert in the field of psychology, Your Honor.

16 THE COURT: All right, sir.

17 Q Dr. Zager, did you have an opportunity to
18 interview a Jon Hall?

19 A Yes, I did, on a number of occasions.

20 Q This is Jon Hall here; is that correct?

21 A That's correct, sitting at the table.

22 Q Dr. Zager, when did you interview Mr. Hall?

23 A I first saw Mr. Hall in November of 1995.
24 That was November 18th. It was approximately a year
25 later I saw him again on November 1st of 1996, and I

1 most recently interviewed him on January 3rd of this
2 year.

3 Q And have you had the opportunity to review
4 any records regarding Jon Hall?

5 A Yes. Not only did I have my own interview
6 and psychological testing that I completed, in addition
7 I reviewed records from the Middle Tennessee Mental
8 Health Institute, forensic services division, where Mr.
9 Hall was for approximately a month. I also had an
10 opportunity to review records from the Riverbend
11 Institution, mental health records. I had the
12 opportunity to review reports of interviews that were
13 conducted with people who knew Mr. Hall.

14 Q Dr. Zager, based upon your interviews with
15 Mr. Hall, based upon your reviewing those records that
16 you just spoke of and based upon your own record that
17 you made and that you wrote up, were you able to
18 formulate any opinion as to whether Mr. Hall suffered
19 from any emotional or psychological condition?

20 A Yes. My diagnosis or my -- what I thought
21 that Mr. Hall suffers from, basically he suffers from
22 depression, and he meets the criteria for a diagnosis
23 of depression. This was prior to the incident and
24 after the incident. It's not as acute right now as it
25 was before. Evidence of that included things like that

1 he had a depressed mood, he had crying spells, he had
2 thoughts of death and suicide, he had difficulty
3 concentrating, disturbed sleep pattern and was noted
4 psycho-social retardation which means that things that
5 he normally did at a much quicker pace he was doing at
6 a much slower pace.

7 Q Were you able --

8 A In addition, he had an alcohol dependence
9 problem. There is a strong family history of alcohol
10 problems in his family, both his father and paternal
11 grandfather had very significant alcohol problems, and
12 that was true in Mr. Hall's case also. In addition I
13 found some personality characteristics which I think
14 are important in terms of understanding his
15 functioning. These include paranoia and dependency.

16 Q Dr. Zager, based upon what you learned, were
17 you able to formulate any opinion as to what Jon Hall's
18 state of mind was on July 29th, 1994?

19 A It's my opinion that at the time of the
20 incident, that Mr. Hall was suffering from depression.
21 In addition, he was intoxicated on alcohol. When that
22 is put together with the depression and the personality
23 characteristics, when that occurs, and some of the
24 stressors, the psycho-social stressors, that he was
25 under at that time, I feel like his abilities were

1 compromised.

2 Q What were the stressors that you're speaking
3 of?

4 A There were a number of stressors. He had a
5 daughter who was born prematurely and suffers from
6 cerebral palsy. For approximately two years he was her
7 primary caretaker, including doing medical-type things
8 she needed, breathing treatments and other things like
9 that. She had other health-related problems, had been
10 hospitalized, and I believe that was a significant
11 stressor for her that went on over time. He had lost
12 his job. His wife had lost her job. They had
13 financial stressors that were operating. His brother,
14 one of his brothers that he was very close to, Jeff,
15 had been diagnosed with AIDS and he was deteriorating
16 around that time. So those stressors were operating.

17 Q Do you have any opinion as to whether he was
18 able to formulate a plan and carry that plan out on
19 July 29th in regards to a murder?

20 A It's my impression, based on everything that
21 I know about the case, that Mr. Hall was acting in an
22 impulsive manner versus a well-thought out plan.

23 MR. MAYO: Thank you, Dr. Zager.

24 - - - - -

25

1 CROSS-EXAMINATION

2 BY MR. EARLS:

3 Q Dr. Zager, the first time you interviewed Mr.
4 Hall was November 18th of 1995; is that correct?

5 A Yes, it is.

6 Q And the date of the homicide is July the 29th
7 of 1994; is that correct?

8 A That's correct.

9 Q So your interview was well over a year after
10 the incident; is that correct?

11 A That's correct.

12 Q Doctor, what is the psychiatric definition of
13 malingering?

14 A Malingering, according to the Diagnostic and
15 Statistical Manual of Mental Illness, has to do with a
16 person feigning symptoms, a person attempting to
17 present themselves in a light where they have an
18 illness when they do not have that illness.

19 Q Okay. And, Doctor, did you prepare a report
20 that you mailed or presented to Mr. Mike Mosier on
21 November 19th, 1995?

22 A Yes, I did.

23 Q And in that report did you make the following
24 statement:

25 "I am somewhat concerned at this time that

1 the only information to suggest that he was intoxicated
2 is Mr. Hall's self report."

3 A I made that statement, and then I was given
4 the opportunity to review notes and information from
5 interviews of other people who were there at that time,
6 and that helped support what he had to tell me.

7 Q What other people did you interview, or what
8 notes did you review, of people who were there?

9 A People who were with him around the time.

10 Q People who were at the scene during the
11 homicide?

12 A No, that's not correct. People who were with
13 him shortly before the incident.

14 Q And did any of those people -- were they able
15 to indicate what his manner or actions were?

16 A To some regard, yes, they were.

17 Q When you say "To some regard," what do you
18 mean?

19 A What I mean is there were people who were
20 with him who will say that he was drinking beer, that
21 there was beer missing from the refrigerator, that he
22 was at a pub and he had beer there.

23 Q Is that all they said?

24 A That's what I recall.

25 Q And that's what they said. And based upon

1 that you believed he was intoxicated.

2 A It's more than that. Given the family
3 history of alcohol dependence, it's not unusual that he
4 had that problem.

5 Q But that doesn't necessarily mean he had that
6 problem, does it?

7 A No, but I think he did.

8 Q Okay. Based upon the fact that some people
9 say --

10 THE COURT: Is that your opinion?

11 THE WITNESS: That is my opinion, yes.

12 Q Based on the fact that people said he was
13 drinking beer.

14 A It's more than that. I base that on the
15 information from the family about he started using
16 alcohol at approximately age 15, as I recall, times
17 when the family saw him intoxicated. There was a lot
18 of information to suggest that it's not just something
19 he was making up. He had an alcohol problem.

20 Q Doctor, what is the Diagnostic Statistical
21 Manual for Mental Disorders?

22 A That's a manual that mental health
23 professionals use. It's put out by the American
24 Psychiatric Association, and it's a way that
25 professionals can use specific criteria to go about

1 deciding if someone has a disorder or not.

2 Q And is that a manual that is widely
3 recognized and accepted in the field of psychology?

4 A Yes, it is.

5 Q Doctor, what is the diagnostic criteria for
6 determining alcohol intoxication?

7 A What you would have is alcohol ingestion, and
8 you would have to be drinking in order to have alcohol
9 intoxication. In addition, there needs to be a
10 physiological sign like slurred speech, unsteady gait,
11 things like that, and in addition, there's usually a
12 change in behavior where the person behaves in a way
13 that's different from when they're not intoxicated.

14 Q Isn't it also true that you have to
15 eliminate medical conditions and other mental
16 disorders?

17 A For intoxication?

18 Q Yes, ma'am.

19 Q Sure.

20 Q And you're not trained in the field of
21 medicine, are you?

22 A No, I'm not.

23 Q Okay. Now, in the reports and the statements
24 that you reviewed, what person talked about him having
25 slurred speech?

1 A I don't recall that.

2 Q What person talked about his incoordination?

3 A I don't recall that.

4 Q What person talked about his unsteady gait?

5 A I don't recall that.

6 Q What person talked about him having a
7 nystagmus?

8 A I don't recall that.

9 Q What person talked about an impaired
10 attention or memory?

11 A I don't recall that, except for him.

12 Q He did.

13 A Uh-huh.

14 Q And what person talked about him being in a
15 stupor or coma?

16 A That was not said.

17 Q And are those the recognized determining
18 factors for intoxication as stated in the Diagnostic
19 and Statistical Manual?

20 A Yes, they are.

21 MR. EARLS: That's all.

22 - - - - -

23 **REDIRECT EXAMINATION**

24 **BY MR. MAYO:**

25 Q Dr. Zager, Mr. Earls was asking you about the

1 various notes and things that you reviewed to determine
2 whether Mr. Hall was an alcoholic. You mentioned that
3 you had read notes or interviews of people that had
4 been with Mr. Hall prior to this; is that correct?

5 A That is correct.

6 Q And you mentioned that you had read medical
7 records of other facilities also.

8 A That's correct.

9 Q You mentioned Middle Tennessee Health
10 Institute.

11 A Mental Health Institute.

12 Q Would you tell us just a little bit about
13 what that is?

14 A Middle Tennessee Mental Health Institute is
15 one of five regional mental health institutes in the
16 state. It normally serves people in the Davidson
17 County area. They have a unit where people who face
18 very serious charges are oftentimes sent for
19 evaluation.

20 Q And is that something -- Is that a private
21 institute or is that a state-run institute?

22 A That's a state-run institute.

23 Q Is it run by the Department of Corrections or
24 ...

25 A It's run by the Department of Mental Health

1 and Mental Retardation.

2 Q And in those records from Middle Tennessee
3 Mental Health Institute, did you find anything that
4 mentioned Mr. Hall's alcohol problem?

5 A Yes. They agreed with my diagnosis.
6 Actually they made it before, but they diagnosed him as
7 suffering from alcohol dependence.

8 Q Thank you.

9 A Which is different from alcohol intoxication.

10 Q And that's what you're speaking of, is
11 alcohol dependence; is that correct?

12 A Yes.

13 Q You didn't actually make a determination that
14 he was --

15 MR. MAYO: I'll withdraw that question.

16 - - - - -

17 **RECROSS-EXAMINATION**

18 **BY MR. EARLS:**

19 Q Did you actually make a determination that he
20 was intoxicated at the time?

21 A I inferred that based on the information I
22 had available to me.

23 Q And that's from Mr. Hall.

24 A That's from Mr. Hall, and in addition, from
25 the other information I had available to me. It was an

1 inference I made.

2 Q An inference.

3 A Uh-huh.

4 (WITNESS EXCUSED.)

5 RANDY HELMS was called and being first duly
6 sworn, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MAYO:

9 Q Would you state your full name for the Court,
10 please?

11 A Randy Helms.

12 Q Mr. Helms, where do you live?

13 A Lexington, Tennessee.

14 Q How long have you lived in Lexington?

15 A Forty-nine years.

16 Q Mr. Helms, what do you do in Lexington? What
17 is your occupation?

18 A I own Helms Motor Company.

19 Q Mr. Helms, do you know Jon Hall?

20 A Yes, sir.

21 Q Can you point Jon Hall out?

22 A (Pointing)

23 Q Mr. Helms, how do you know Mr. Hall?

24 A He worked for me at one time.

25 Q Mr. Helms, did you personally observe Mr.

1 Hall on occasions?

2 MR. WOODALL: Your Honor, side bar.

3 (There was a conference at the
4 bench, out of the hearing of the
5 jury, as follows:)

6 MR. WOODALL: Your Honor, I don't -- unless
7 this is close in time to the event which has occurred
8 here, I don't think this is admissible. I think it's
9 just like his sister, and we would object to it.

10 THE COURT: I would suggest that you would
11 ask him when --

12 MR. MAYO: Oh, I am. I haven't gotten there
13 yet.

14 THE COURT: All right. Well get there as
15 soon as you can.

16 MR. MAYO: Yes, sir.

17 (End of conference at the bench.)

18 THE COURT: Mr. Helms, when was it he worked
19 for you?

20 THE WITNESS: It was about in '93 through
21 probably the middle part of '94.

22 THE COURT: A year and a half or something
23 like that?

24 THE WITNESS: Year, year and a half.

25 THE COURT: All right, go ahead.

1 Q Mr. Helms, the last time he worked for you
2 was sometime in June of '94; is that correct?

3 A That would have been about right.

4 Q And after that June of '94, did you see Mr.
5 Hall?

6 A Yes, sir, I saw him quite regularly.

7 Q Mr. Helms, when was the last time that you
8 saw him prior to July 29th? Which I believe was a
9 Friday.

10 A It would have been on Wednesday which I
11 assume was July the 27th.

12 Q Mr. Helms, could you tell us, please, sir,
13 what kind of condition Mr. Hall was in?

14 A He had been severely depressed, just down and
15 out, and didn't have a real good outlook on life. The
16 reason that I saw him on that day, he had stopped by to
17 tell me that he had got a new job. I'm sure I'm right
18 about this. He was starting a new job, and I think it
19 was Columbus-McKinnon which is a chain factory there in
20 Lexington, and I think he just more or less stopped by
21 to let me know that he was fixing to go to work, and
22 hopefully, you know, that maybe he could get on with
23 his life.

24 Q What was it that made you think or state to
25 this Court that you felt he was depressed?

1 A Well, just in talking to him about the
2 problems, the family problems he'd been having and just
3 the trouble that him and his wife were having and the
4 affect it was having on him and his children and all,
5 he was just having a hard time dealing with it. It was
6 just a depressive-type situation is all I can say.

7 MR. MAYO: Thank you, Mr. Helms.

8 MR. WOODALL: No questions.

9 **(WITNESS EXCUSED.)**

10 MR. MAYO: Defense rests, Your Honor.

11 **(The jury was excused from open**
12 **court; the Motion for Judgment of**
13 **Acquittal was renewed and overruled;**
14 **and the following proceedings were**
15 **had to-wit:)**

16 MR. WOODALL: Your Honor, I also think that
17 for the record that the Defendant needs to be put under
18 oath and asked if --

19 THE COURT: Mr. Hall, would you please stand?
20 Would you stand and raise your right hand?

21 THE DEFENDANT: Are you trying to coerce me
22 inside the bar -- the sanctuary of the bar? See, you
23 didn't remove that flag of war.

24 THE COURT: Mr. Hall, I order you to raise
25 your right hand. You refuse?

1 THE DEFENDANT: Your Honor, they're trying to
2 take my life away. I have my constitutional rights.
3 What do I have to be sworn in for? You know who I am.

4 THE COURT: All right, just have a seat.

5 Mr. Ford, will you please address the Court
6 and tell me if this man has been -- has had a
7 negotiated plea discussed with him and --

8 MR. FORD: Yes, sir. We took that up, Your
9 Honor, on the record earlier, if the Court will recall.

10 THE COURT: Well what do you want?

11 MR. WOODALL: Your Honor, I think it needs to
12 be on the record it's his decision not to testify in
13 his own behalf.

14 THE COURT: Well, Mr. Ford, have you told
15 this man the possibility about testifying and not
16 testifying?

17 MR. FORD: We fully discussed that, Your
18 Honor, and of course, we rested our case.

19 THE COURT: And then what did he tell you?
20 What was his -- Did he agree, or did he tell you that
21 he agreed not to take the stand?

22 MR. FORD: Well, Your Honor, that may be
23 privileged communication and a decision that we may
24 have arrived at discussing strategies of the case. I
25 don't know if I'm allowed to --

1 THE COURT: Well you go ahead. Listen to
2 this. Did you discuss it with him?

3 MR. FORD: Yes, sir.

4 THE COURT: And did you feel that he
5 understood what you were discussing?

6 MR. FORD: Absolutely.

7 THE COURT: And then after the discussion,
8 was he advised with regard to what the decision was
9 going to be as to whether he would testify or not?

10 MR. FORD: Yes, sir.

11 THE COURT: In your opinion was that made
12 freely?

13 MR. FORD: Yes, sir, after -- We've discussed
14 that issue numerous -- on numerous occasions.

15 THE COURT: Anything else, General?

16 MR. WOODALL: No, sir, that's fine.

17 THE COURT: Call the jury back.

18 THE DEFENDANT: Your Honor, I'll testify if
19 you take down the flag of war or sign that judicial
20 contract.

21 THE COURT: I don't know what -- Do you mind
22 advising your client I'm not aware of a --

23 THE DEFENDANT: I sent it to you and you
24 signed it certified receipt.

25 THE COURT: Call the jury back. The case is

1 already closed.

2 (The jury returned into open court,
3 and the following proceedings were
4 had to-wit:)

5 THE COURT: Members of the jury, now you have
6 heard all the evidence which is to be presented in this
7 case. The next step is for the lawyers to give their
8 closing arguments. Even though these arguments do not
9 constitute evidence, you should consider them very
10 carefully.

11 In the argument, counsel will call to your
12 attention the evidence which they consider material and
13 will ask you to draw certain inferences from that
14 evidence. Please keep in mind, however, that you're
15 not bound by their recollection of the evidence. It is
16 your recollection of the evidence and your recollection
17 alone which must guide you -- guide your deliberations.
18 If there are discrepancies between the lawyers'
19 recollection and your recollection, you're bound by
20 your own recollection, nor are you limited in your own
21 consideration of the evidence to that which is
22 mentioned by the lawyers.

23 You must consider all of the evidence which
24 you consider material to the issues involved to the
25 extent that the inferences which counsel asks you to

1 draw are supported by the evidence and appeal to your
2 reason and judgment. You may consider them in your
3 deliberations.

4 Lawyers may also call your attention to
5 certain principles of law in the arguments. Please
6 remember now that you are not bound by any principle of
7 law mentioned by the lawyers. You must apply the law
8 in which you are instructed by me and only that law to
9 the facts as you find them.

10 The State will make an opening argument, and
11 then the lawyer for the Defendant will argue and then
12 the State follows with a closing argument, and then
13 after the arguments I will instruct you as to the law
14 which you will apply to the facts as you find them.

15 Go to the jury room for a short recess, and
16 we're going to discuss the charge.

17 **(The jury was excused from open court,**
18 **and the following proceedings were had**
19 **to-wit:)**

20 MR. WOODALL: Judge, you're charging first
21 and second, and I'm just wondering and ask the defense
22 lawyers what they think. I don't see anything in there
23 and the evidence has been presented that's voluntary
24 manslaughter or criminally negligent homicide.

25 MR. FORD: We have no problem with what the

1 Court's charging, Your Honor, except for flight. We
2 don't feel that that's been shown. There's no
3 witnesses that said he had fled.

4 THE COURT: Well there is witnesses that he
5 was located in Alabama.

6 MR. FORD: Texas, Your Honor, but there's
7 been no proof that he ran to avoid arrest or anything
8 like that.

9 THE COURT: I'm going to charge it

10 MR. FORD: All right, sir. On the expert
11 witness charge, we'd also ask that Dr. Lynn Zager, the
12 clinical psychologist, be added.

13 THE COURT: Okay. Ready for argument?

14 MR. WOODALL: Yes, sir.

15 MR. FORD: Yes, sir.

16 THE COURT: Call the jury.

17 **(Arguments were heard on behalf**
18 **of the State and the Defendant,**
19 **without objection; out of the hearing**
20 **and presence of the jury, there was**
21 **an agreement between the State and the**
22 **Defendant to waive the fines that could**
23 **be imposed by the jury; and the Court**
24 **charged the jury as follows:)**

25 THE COURT: The Defendant Jon Douglas Hall is

1 charged in the indictment with the crime of first
2 degree murder. The Defendant pleads not guilty to this
3 offense.

4 The offense necessarily includes the lesser
5 offenses or grades of murder in the second degree,
6 voluntary manslaughter, reckless homicide and
7 criminally negligent homicide. The Defendant pleads
8 not guilty to each and every offense embraced in the
9 indictment.

10 The evidence and arguments in this case have
11 been completed, and it is my duty now to instruct you
12 as to the law. The law applicable to this case is
13 stated in these instructions, and it is your duty to
14 carefully consider all of them. The order in which
15 these instructions are given is no indication of their
16 relative importance. You should not single out any one
17 or more of them to the exclusion of another or others
18 but should consider each one in light of and in harmony
19 with the others.

20 At times during the trial I have ruled upon
21 the admissibility of evidence. You must not concern
22 yourself with these rulings. Neither by such rulings,
23 these instructions nor any other remarks which I have
24 made do I mean to indicate any opinion as to the facts
25 or as to what your verdict should be.

1 Statements, arguments and remarks of counsel
2 are intended to help you in understanding the evidence
3 and applying the law, but they are not evidence. If
4 any statements were made that you believe are not
5 supported by the evidence, you should disregard them.

6 You are the exclusive judges of the facts in
7 this case. Also, you are the exclusive judges of the
8 law under the direction of the Court. You should
9 apply the law to the facts in deciding this case. You
10 should consider all of the evidence in the light of
11 your own observations and experience in life.

12 The law presumes that the Defendant is
13 innocent of the charges against him. This presumption
14 remains with the Defendant throughout every stage of
15 the trial, and it is not overcome unless from all the
16 evidence in the case you are convinced beyond a
17 reasonable doubt that the Defendant is guilty.

18 The State has the burden of proving the guilt
19 of the Defendant beyond a reasonable doubt, and this
20 burden never shifts but remains on the State throughout
21 the trial of the case. The Defendant is not required
22 to prove his innocence.

23 Reasonable doubt is that doubt engendered by
24 an investigation of all the proof in the case and an
25 inability after such investigation to let the mind rest

1 easily as to the certainty of guilt. Reasonable doubt
2 does not mean a capricious, possible or imaginary
3 doubt. Absolute certainty of guilt is not demanded by
4 the law to convict of any criminal charge, but moral
5 certainty is required, and this certainty is required
6 as to every proposition of proof requisite to
7 constitute the offense.

8 The State must have proven beyond a
9 reasonable doubt all of the elements of the crime
10 charged and that it was committed before the finding
11 and returning of the indictment in this case.

12 If you have a reasonable doubt as to the
13 Defendant's guilt of first degree murder as charged in
14 the indictment, then your verdict must be not guilty as
15 to this offense, and then you will proceed to determine
16 his guilt or innocence of the lesser included offense
17 of murder in the second degree.

18 If you have a reasonable doubt as to the
19 Defendant's guilt of murder in the second degree, then
20 your verdict must be not guilty of this offense, and
21 then you would proceed to determine his guilt or
22 innocence to the lesser included offense of voluntary
23 manslaughter. If you have a reasonable doubt as to the
24 Defendant's guilt of voluntary manslaughter, then your
25 verdict must be not guilty as to this offense, and then

1 you'll proceed to determine his guilt or innocence of
2 the lesser included offense or grade of reckless
3 homicide. If you have a reasonable doubt as to the
4 Defendant's guilt of reckless homicide, then you must
5 proceed to determine his guilt or innocence of the
6 lesser included offense of criminally negligent
7 homicide. The verdict must represent the considered
8 judgment of each juror. In order to return a verdict,
9 it is necessary that each juror agree thereto. Your
10 verdict must be unanimous.

11 It is your duty as jurors to consult with one
12 another and to deliberate with a view to reaching an
13 agreement, if you can do so without violence or
14 individual judgment. Each of you must decide the case
15 for yourself, but do so only after an impartial
16 consideration of the evidence with your fellow jurors.
17 In the course of your deliberations, do not hesitate to
18 reexamine your own views and change your opinion if
19 convinced it is erroneous. But do not surrender your
20 honest conviction as to the weight or effect of the
21 evidence solely because of the opinion of your fellow
22 jurors, or for the mere purpose of returning a verdict.

23 FIRST DEGREE MURDER (PREMEDITATED KILLING)

24 Any person who commits the offense of first
25 degree murder is guilty of a crime.

1 For you to find the Defendant guilty of this
2 offense, the State must have proven beyond a reasonable
3 doubt the existence of the following essential
4 elements:

5 (1) That the Defendant unlawfully killed the
6 alleged victim; and, that the Defendant acted
7 intentionally. A person acts intentionally with
8 respect to the nature of his conduct or the result of
9 the conduct when it is the person's conscious objective
10 or desire to engage in the conduct or cause the result;
11 and

12 (3) That the killing was deliberate. A
13 deliberate act is one performed with a cool purpose;
14 and, that the killing was premeditated. A premeditated
15 act is one done after an exercise of reflection and
16 judgment. Premeditation means that the intent to kill
17 must have been formed prior to the act itself. It is
18 not necessary that the purpose to kill preexist in the
19 mind of the accused for any definite period of time.
20 It is sufficient that it preceded the act, however
21 short the interval, as long as it was the result of
22 reflection and judgment. The mental state of the
23 accused at the time he allegedly decided to kill must
24 be carefully considered in order to determine whether
25 the accused was sufficiently free from excitement and

1 passion as to be capable of premeditation. If the
2 design to kill was formed with deliberation and
3 premeditation, it is immaterial that the accused may
4 have been in a state of passion or excitement when the
5 design was carried into effect. Furthermore,
6 premeditation can be found if the decision to kill is
7 first formed during the heat of passion, but the
8 accused commits the act after the passion has subsided.

9 If you find from the proof beyond a
10 reasonable doubt the Defendant is guilty of murder in
11 the first degree, you will so report and your verdict
12 in that event shall be, "We, the jury, find the
13 Defendant guilty of murder in the first degree."

14 If you so find then, it shall be your duty
15 after a separate sentencing hearing to determine
16 whether the Defendant will be sentenced to death, life
17 imprisonment or without the possibility of parole, or
18 life imprisonment, but you will not consider the
19 punishment for this offense at this time.

20 The punishment for the offense is life
21 imprisonment, life imprisonment with parole or death by
22 electrocution.

23 SECOND DEGREE MURDER

24 Any person who commits second degree murder
25 is guilty of a crime.

1 For you to find the Defendant guilty of this
2 offense, the State must have proven beyond a reasonable
3 doubt the existence of the following essential
4 elements:

5 (1) That the Defendant unlawfully killed the
6 alleged victim; and

7 (2) That the Defendant acted knowingly.

8 Knowingly means that a person acts knowingly
9 with respect to the conduct or circumstances
10 surrounding the conduct when the person is aware of the
11 nature of the conduct or that the circumstances exist.
12 A person acts knowingly with respect to a result of the
13 person's conduct when the person is aware that the
14 conduct is reasonably certain to cause the result.

15 The requirement of knowingly is also
16 established if it is shown that the Defendant acted
17 intentionally.

18 VOLUNTARY MANSLAUGHTER

19 Any person who commits voluntary manslaughter
20 is guilty of a crime.

21 For you to find the Defendant guilty of this
22 offense, the State must have proven beyond a reasonable
23 doubt the existence of the following elements:

24 (1) That the Defendant unlawfully killed the
25 alleged victim; and

1 (2) That the Defendant acted intentionally
2 or knowingly; and

3 (3) That the killing resulted from a state
4 of passion produced by adequate provocation sufficient
5 to lead a reasonable person to act in an irrational
6 manner.

7 The distinction between voluntary
8 manslaughter and second degree murder is that voluntary
9 manslaughter requires that the killing result from a
10 state of passion produced by adequate provocation
11 sufficient to lead a reasonable person to act in an
12 irrational manner.

13 Intentionally means that a person acts
14 intentionally with respect to the nature of the conduct
15 or to a result of the conduct when it is a person's
16 conscious objective or desire to engage in the conduct
17 or cause the result.

18 RECKLESS HOMICIDE

19 Any person who commits the offense of
20 reckless homicide is guilty of a crime.

21 For you to find the Defendant guilty of this
22 offense, the State must have proven beyond a reasonable
23 doubt the existence of the following essential
24 elements:

25 (1) That the Defendant killed the alleged

1 victim; and

2 (2) That the Defendant acted recklessly.

3 Recklessly means that a person acts
4 recklessly with respect to circumstances surrounding
5 the conduct or the result of the conduct when the
6 person is aware of but consciously disregards a
7 substantial and unjustifiable risk that the
8 circumstances exist or the result will occur. The risk
9 must be of such a nature and degree that its disregard
10 constitutes a gross deviation from the standard of care
11 that an ordinary person would exercise under all the
12 circumstances as viewed from the accused person's
13 standpoint.

14 The requirement of recklessly is also
15 established if it is shown that the Defendant acted
16 intentionally or knowingly.

17 CRIMINALLY NEGLIGENT HOMICIDE

18 Any person who commits criminally negligent
19 homicide is guilty of a crime.

20 For you to find the Defendant guilty of this
21 offense, the State must have proven beyond a reasonable
22 doubt the existence of the following essential
23 elements:

24 (1) That the Defendant's conduct resulted in
25 the death of the alleged victim; and

1 (2) That the Defendant acted with criminal
2 negligence.

3 Criminal negligence means that a person acts
4 with criminal negligence with respect to the
5 circumstances surrounding that person's conduct or the
6 result of that conduct when the person ought to be
7 aware of a substantial and unjustifiable risk that the
8 circumstances exist or the result will occur. The risk
9 must be of such a nature and degree that the failure to
10 perceive it constitutes a gross deviation from the
11 standard of care that an ordinary person would exercise
12 under all the circumstances as viewed from the accused
13 person's standpoint.

14 The requirement of criminal negligence is
15 also established if it is shown that the Defendant
16 acted intentionally, knowingly or recklessly.

17 The Defendant has not taken the stand to
18 testify as a witness, but you shall place no
19 significance on this fact. The Defendant is presumed
20 innocent, and the burden is on the State to prove his
21 guilt beyond a reasonable doubt. He is not required to
22 take the stand in his own behalf, and his election to
23 do so cannot be considered for any purpose against him,
24 nor can any inference be drawn from such fact.

25

1 FLIGHT

2 The flight of a person accused of a crime is
3 a circumstance which when considered with all the facts
4 may justify an inference of guilt. Flight is a
5 voluntary withdrawal of oneself for the purpose of
6 evading arrest or prosecution for the crime charged.
7 Whether the evidence presented proves beyond a
8 reasonable doubt the Defendant fled is a question for
9 your determination.

10 The law makes no precise distinction as to
11 the manner or method of flight; it may be open or it
12 may be a hurried or concealed departure, or it may be
13 concealment within the jurisdiction. However, it takes
14 both the leaving of the scene of the difficulty and
15 subsequently hiding out, evasion or concealment in the
16 community or leaving the community for parts unknown to
17 constitute flight.

18 If flight is proved, the fact of flight alone
19 does not allow you to find that the Defendant is guilty
20 of the crime alleged. However, since flight by the
21 Defendant may be caused by a consciousness of guilt,
22 you may consider the fact of flight, if flight is so
23 proven, together with all of the other evidence when
24 you decide the guilt or innocence of the Defendant. On
25 the other hand, an entirely innocent person may take

1 flight, and such flight may be explained by proof
2 offered or by the facts and circumstances of the case.

3 Whether there was a flight by the Defendant,
4 the reasons for it and the weight to be given it, are
5 questions for you to determine.

6 CREDIBILITY OF WITNESSES

7 You will take all of the evidence adduced in
8 the case by the State and the Defendant and give it a
9 full, fair and impartial consideration. If there are
10 any conflicts in the statements of the different
11 witnesses, it is your duty to reconcile them, if you
12 can, for the law presumes that every witness has sworn
13 to the truth, but if you cannot, the law makes you the
14 sole and exclusive judges of the credibility of the
15 witnesses and the weight to be given their testimony.
16 In forming your opinion as to the credibility of a
17 witness, you may look to the proof, if any, of his
18 general character, the manner and demeanor of the
19 witness, the consistency or inconsistency of his
20 statements, their probability or improbability, his
21 ability and willingness to speak the truth, his
22 intelligence and means of knowledge, his motive to
23 speak the truth or swear to a falsehood, his interest
24 or lack of interest in the outcome of the trial.

25 There are several modes of impeaching a

1 witness. One mode is to prove that a witness has, at
2 different times, made conflicting statements as to the
3 material facts of the case as to which he testifies.
4 Still another mode is rigid and close cross-examination
5 to involve the witness in contradictions and
6 discrepancies as to material facts stated by him.
7 Immaterial discrepancies or differences in the
8 statements of witnesses do not affect their credibility
9 unless there is something to show that they originated
10 in a willful falsehood, and, you, members of the jury,
11 are to determine how far the testimony of any witness
12 has been impaired by the invalidating process.

13 The guilt of the Defendant as well as any
14 fact required to be proved may be established by direct
15 evidence, by circumstantial evidence or by both
16 combined.

17 Direct evidence is defined as evidence which
18 proves the existence of the fact in issue without
19 inference or presumption. Direct evidence may consist
20 of testimony of a person who has perceived by the means
21 of his senses the existence of a fact, sought to be
22 proved or disproved.

23 Circumstantial evidence consists of proof of
24 collateral facts and circumstances which do not
25 directly prove the fact in issue but from which that

1 fact may logically inferred.

2 When the evidence is made up entirely of
3 circumstantial evidence, then before you would be
4 justified in finding the Defendant guilty, you must
5 find that all the essential facts are consistent with
6 the hypothesis of guilt, as that is to be compared with
7 all the facts proved; the facts must exclude every
8 other reasonable theory or hypothesis except that of
9 guilt, and the facts must establish such a certainty of
10 guilt of the Defendant as to convince the mind beyond a
11 reasonable doubt that the Defendant is the one who
12 committed the offense. It is not necessary that each
13 particular fact should be proved beyond a reasonable
14 doubt if enough facts are proved to satisfy the jury
15 beyond a reasonable doubt of all the facts necessary to
16 constitute the crime charged. Before the verdict of
17 guilty is justified, the circumstances, taken together,
18 must be of a conclusive nature and tendency leading on
19 the whole to a satisfactory conclusion and producing,
20 in effect, a moral certainty the Defendant and no one
21 else committed the offense.

22 The Court has charged the jury concerning
23 certain inferences that the jury may or may not make in
24 regard to certain evidence in this case. However, the
25 jury is not required to make this inference. It is the

1 exclusive province of the jury to determine whether the
2 facts and circumstances shown by all the evidence in
3 the case warrant the inference which the law permits
4 the jury to do. The inference may be rebutted by
5 direct or circumstantial evidence or both, whether
6 offered by the Defendant or such exists in the evidence
7 of the State, and the burden of proof remains, as
8 always, upon the State to prove beyond a reasonable
9 doubt each and every element that constitutes the
10 offense before the Defendant can be convicted.
11 Although not required by law to do so, when the
12 Defendant offers proof of an explanation to rebut the
13 inference raised, you should consider such proof of
14 such explanation to rebut the inference. You should
15 consider such proof along with all the evidence to
16 determine not only the correctness of the inference but
17 the reasonableness of the Defendant's explanation. You
18 are not bound to accept either and, as aforesaid, the
19 burden of proving guilt of this offense charged beyond
20 a reasonable doubt is upon the State.

21 DEFENSE: INTOXICATION

22 Included in the Defendant's plea of not
23 guilty is his plea of intoxication as a defense.

24 You have heard evidence concerning the
25 alleged intoxication of the Defendant the time of the

1 alleged offense.

2 Intoxication itself is generally not a
3 defense to prosecution for an offense. If a person
4 voluntarily becomes intoxicated and while in that
5 condition commits an act which would be a crime if he
6 or she were sober, he or she is fully responsible by
7 his or her conduct. It is the duty of persons to
8 remain from placing themselves in a condition which
9 poses a danger to others.

10 Intoxication means disturbance of mental or
11 physical capacity resulting from the introduction of
12 any substance in the body.

13 Voluntary intoxication means intoxication
14 caused by a substance that the person knowingly
15 introduced into the person's body, the tendency of
16 which to cause intoxication was known or ought to have
17 been known.

18 Intoxication is irrelevant to the issue of
19 the essential element of the Defendant's culpable
20 mental state.

21 In this case the State must prove beyond a
22 reasonable doubt the required culpable, c-u-l-p-a-b-l-
23 e, mental state of the Defendant as defined in each
24 offense listed in the charge.

25 If you find that the Defendant was

1 intoxicated to the extent that he could not have
2 possessed the required culpable mind, then he cannot be
3 guilty of the offense charged.

4 If you are not satisfied beyond a reasonable
5 doubt that the Defendant possessed the culpable mental
6 state, then you must find him not guilty.

7 If recklessness establishes an element of the
8 offense and the Defendant is unaware of a risk because
9 of voluntary intoxication, the Defendant's unawareness
10 is immaterial and is no defense to that element in the
11 prosecution of said offense.

12 EXPERT WITNESS

13 During the trial you heard the expert
14 testimony of Dr. O. C. Smith who was described to us as
15 an expert in the field of forensic pathology and Dr.
16 Lynn Donna Zager who was described to us an expert in
17 the field of clinical psychology.

18 The rules of evidence provide that if
19 scientific, technical or other specialized knowledge
20 might assist the jury in understanding the evidence or
21 in determining a fact in issue, a witness qualified as
22 an expert by reason of special knowledge, skill or
23 experience may testify and state his or her opinion
24 concerning such matters and giving such reasons for his
25 or her testimony.

1 Merely because an expert has expressed an
2 opinion does not mean, however, that you're bound by
3 it, bound to accept this opinion. The same as with any
4 other witness, it is up to you to decide whether you
5 believe this testimony and choose to rely upon it.
6 Part of that decision will depend on your judgment
7 about whether the witness' background or training and
8 experience is sufficient for the witness to give their
9 expert opinion that you heard. You must decide whether
10 the witness' opinions were based on sound reason,
11 judgment and information.

12 You are to give the testimony of an expert
13 witness such weight and value as you think it deserves
14 along with all the other evidence in the case.

15 Members of the jury, the Court charges you
16 that if any of you have been taking notes in this case,
17 that these notes are for your individual use only, and
18 you should not use these notes directly or indirectly,
19 explicitly or implicitly, to persuade other jurors as
20 to the accuracy of said notes. They should not be
21 shown to the others or compared or referred to in any
22 way as an authority but should be used privately only
23 by the maker of said notes as an aid to his or her
24 individual memory.

25 You can have no prejudice or sympathy or

1 allow anything but the law and the evidence to have an
2 influence upon your verdict. You must render your
3 verdict with absolute fairness and impartiality as you
4 think justice and truth dictate. When you retire to
5 the jury room, you will first select one of your
6 members as foreperson who will preside over your
7 deliberations.

8 When you have reached a verdict, you will
9 return with it to this courtroom and your foreperson
10 will announce it.

11 The jury will not attempt to fix any
12 punishment or sentence at this time. However, for your
13 information only, you are informed that the ranges of
14 punishment as the crimes involved herein are as
15 follows:

16 First degree murder, death, life in prison
17 without the possibility of parole, or life in prison
18 with the possibility of parole.

19 Murder in the second degree, not less than 15
20 nor more than 60 years imprisonment.

21 Voluntary manslaughter, not less than three
22 nor more than 15 year years imprisonment.

23 Reckless homicide, not less than two nor more
24 than four years imprisonment.

25 Criminally negligent homicide, not less than

1 one nor more than six years imprisonment.

2 If you find that the State has proven the
3 Defendant guilty a reasonable doubt, you will find the
4 Defendant guilty. In that event your foreperson will
5 report that you find the Defendant guilty and will name
6 the offense agreed upon.

7 On the other hand, if you find that the State
8 has not proven beyond a reasonable doubt the
9 Defendant's guilt or if you have a reasonable doubt as
10 to guilt, then you will find him not guilty. In that
11 event your foreperson will report that you find the
12 Defendant not guilty.

13 You will now retire and begin your
14 deliberations.

15 THE COURT: Any exceptions to the charge?

16 MR. WOODALL: No, Your Honor.

17 MR. FORD: No, sir.

18 (The jury retired to begin
19 deliberations at 5:05 p.m.;
20 the alternate jurors were excused;
21 the jury deliberated until 6:00
22 p.m. whereupon they returned into
23 open court, were admonished, and
24 court was recessed for the
25 day.)